

REMARKS

Claims 26-58 are pending in the captioned application. Claims 26, 47, 48 and 50-52 have been amended. Claims 54-58 have been added. Support for the amendments to the claims and new claims 54-58 can be found through the specification and claims as originally filed.

The amendments to the claims and the cancellations of claims are solely to advance prosecution. Applicants, by amending or cancelling any claims herein, make no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicants reserve the right to reassert the original claim scope of any claim amended or canceled herein, in a continuing application.

No new matter has been introduced to this application within the meaning of 35 U.S.C. §132.

I. Restriction Requirement

In the outstanding Official Action, the Examiner has required restriction of claims 26-53 to one of following inventions under 35 U.S.C. §§ 121 and 372:

- Group I: Claim(s) 26-47 (and new claims 54-56), drawn to a process of handling solution of sucrose intermediates and derivatives including, chlorinated sucrose; and
- Group II: Claim(s) 48-53 (and new claims 57 and 58), drawn to a solid powder form of a chlorinated sucrose, its intermediates, its derivatives of the process of claim 26.

The Examiner asserts that Group I and II do not relate to a single general inventive concept under PCT Rule 13.1 because the groups lack the same or corresponding special technical feature. The Examiner further asserts that claim 48 is a product by process claim and the only the product itself is considered for patentability. Further, the product, chlorinated sucrose, its intermediate and its derivatives, lack inventive step over the powdered sucralose of Carolyn et al. (US Pat. No. 7,018,667).

II. Provisional Election

Applicants note that new claims 54-56 are process claims that should be included in Group I and new claims 57 and 58 are product by process claims that should be included in Group II.

Applicants provisionally elect **claims 48-53 and new claims 57 and 58 of Group II** with traverse.

Applicants reserve the right to file a divisional application directed to the non-elected subject matter.

III. Clarification of Claims

The Examiner stated that independent claim 26 could be interpreted as a method of using a product, or as a method of making sucralose. Further, the Examiner stated that for purposes of the Restriction Requirement, the claims are interpreted as a method of making sucralose.

Applicants note the interpretation of claim 26 as a method of making sucralose is only partly correct. The correct position is that the presently claimed subject matter is

directed towards **a method of isolating sucralose in powder form from its solution directly by drying a solution of sucralose without subjecting the product to a process of crystallization**. Such a method invariably yields a solid powder that is entirely or partly amorphous and partly with microcrystalline particles that are, in any case, smaller in size than prior art crystalline forms, which are crystallized by water crystallization or solvent crystallization. It is for this reason, a correlation between the process and the particle size and amorphous nature of the product, which are novel and non-obvious features of the product, that there is unity of invention. Direct drying is a contribution to the art because conventional methods of crystallizing sucralose are tedious and yield only a partial recovery of product. Direct drying is a simpler alternative method and yields a total recovery/isolation of the sucralose product in amorphous powder form having a smaller particle size. Thus, when considered as a whole, the method of the presently pending claims, direct drying and producing solid sucralose amorphous powder having a smaller particle size, forms a general inventive concept.

Accordingly, Applicants agree the claims should be interpreted as methods of making sucralose but should further be interpreted as described above.

IV. Traversal

Applicants respectfully traverse this restriction requirement because Groups I and II share a **special technical feature** under PCT Rule 13.2, and thus, all of the presently pending claims possess unity of invention. Accordingly, restriction is improper.

PCT Rule 13.2 states the following, in relevant part:

“[T]he requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression ‘special technical features’ shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.”

In the present application, the special technical feature that is shared between Groups I and II is “***chlorinated sucrose... at least a part of which has particles that are amorphous or noncrystalline.***” The process of presently pending claims 26 to 47 is a process of “drying” (which is different from crystallization) a liquid containing sucralose or intermediates or derivatives of sucralose with or without impurities formed in a process that inherently produces solid sucralose powder, without subjecting the product to a crystallization process. The process of the presently claimed subject matter produces a powder of ***amorphous sucralose particles***. The special technical feature is that, while prior art sucralose manufacturing methods include a step of either water or solvent crystallization for recovering the same in solid form, the process recited in the presently claimed subject matter produces sucralose particles “directly” without a crystallization step. Thus, the process of the presently pending claims is “specially adapted” to produce the chlorinated sucrose product of the presently claimed subject matter. Therefore, Groups I and II do not lack unity of invention.

Further, Applicants note that because the intended meaning of the claim was unclear to the Examiner in its previously presented form and it was interpreted by the

Examiner to cover “sucralose, its intermediates and derivatives” only, the Examiner has cited Carolyn et al (US Pat., No. 7,018,667) as a document that teaches powdered sucralose. The Examiner concludes that the product does not possess an inventive step over teachings of the prior art, which forms the basis of the Examiner’s justification for the restriction requirement.

Applicants have amended the claims to provide clarification of the intended meaning. The clarification of the presently pending claims provided above in section III is incorporated herein in its entirety.

It is clear that Carolyn et al. teach powders obtained by freeze drying aqueous solutions of sucralose and varying amounts by weight of maltodextrin, sodium saccharin, aspartame, acesulphame-K, sodium citrate, calcium cyclamate, and acesulphame K. In contrast, the presently claimed method recovers sucralose from its solution. With other constituents, such as acesulphame K, as substantial fillers, the sucralose powders of Carolyn et al. have properties with respect to its hygroscopicity that are different than solution of sucralose with impurities that are very closely similar to its chemical composition that are present in much smaller amount, and certainly further different from pure sucralose solution (or of its intermediate or derivative) obtained as eluted out effluent from chromatography purification columns. Thus, Carolyn et al. do not anticipate the amorphous sucralose, the presently claimed subject matter. Hence, the product of Carolyn et al is a different product than the ***chlorinated sucrose, at least a part of which has particles that are amorphous or noncrystalline, of the***

presently claimed subject matter, and therefore, does not anticipate or render obvious the product of the presently claimed subject matter. Thus, with this being the only basis given for justifying the restriction requirement, and Carolyn et al. failing to teach or suggest the sucralose of the presently claimed subject matter, Applicants respectfully request the Examiner reconsider and withdraw the Restriction Requirement.

In view of the foregoing, Applicants respectfully submit that the claims of Groups I and II possess “unity of invention” because they share a special technical feature as required by PCT Rule 13.2. Thus, restriction of the claims of Groups I and II is improper. Accordingly, the Examiner is respectfully requested to reconsider and withdraw this restriction requirement.

CONCLUSION

In view of the foregoing, it is submitted that the Restriction Requirement is improper. Accordingly, the Examiner is respectfully requested to withdraw the requirement, and to examine all of the claims, namely claims 26-58, on the merits.

Applicants submit that the application is in condition for substantive examination. The Examiner is invited to contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

THE NATH LAW GROUP

Date: May 10, 2009

THE NATH LAW GROUP
112 South West Street
Alexandria, VA 22314
Telephone: (703) 548-6284
Facsimile: (703) 683-8396
JBG/TEH/RMJ\RRR.05.09.doc

/Tanya E. Harkins/
Joshua B. Goldberg
Reg. No. 44,126
Tanya E. Harkins
Reg. No. 52,993
Robert M. Joynes
Reg. No. 54,842
Customer No. 20529